



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)	Case No. 05-26408-C-7
RYAN CHURCHILL,)	Adv. Proc. No. 05-2313
Debtor.)	DC No. BRR-3
_____)	
MARCO AMBROSELLI,)	
Plaintiff,)	
v.)	
RYAN CHURCHILL,)	
Defendant.)	
_____)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTION FOR
ATTORNEY'S FEES AND COSTS**

On May 26, 2006, defendant, Ryan Churchill, filed a motion for attorney's fees and costs in connection with the defense and subsequent dismissal of adversary proceeding number 05-2313.

Defendant's motion requests that the court award him \$12,802.50 in fees and \$106.61 in costs for a total award of \$12,909.11 pursuant to 11 U.S.C. § 523(d); California Civil Code § 1717; and California Code of Civil Procedure § 1021.

The court does not understand Ninth Circuit precedent to permit application of the California statutes to simple

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1 nondischargeability issues. Hence, the focus is on
2 § 523(d).

3 Notice was timely served on plaintiff and a hearing
4 on the motion was scheduled for July 18, 2006. In response,
5 plaintiff filed an opposition. Defendant filed a reply to
6 plaintiff's opposition. A hearing was held on July 18,
7 2006. The court took the matter under submission.

8 11 U.S.C. § 523(d) provides:

9 If a creditor requests a determination
10 of dischargeability of a consumer debt
11 under subsection (a)(2) of this section,
12 and such debt is discharged, the court
13 shall grant judgment in favor of the
14 debtor for the costs of, and a
15 reasonable attorney's fee for, the
proceeding if the court finds that the
position of the creditor was not
substantially justified, except that the
court shall not award such costs and
fees if special circumstances would make
the award unjust.

16 On May 12, 2006, adversary proceeding 05-2313 was
17 dismissed without prejudice. While testimony about the
18 underlying transaction took place, the testimony occurred in
19 the context of an evidentiary hearing to determine whether
20 service was properly made on defendant. Thus, the court did
21 not hear the full dispute.

22 The adversary proceeding was dismissed without
23 prejudice on account of defective service on defendant.
24 While there is merit to defendant's substantial
25 justification argument, not having heard the full merits of
26 the case, the court is not in the position to determine the
27 substantial justification issue for purposes of § 523(d).
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1 Therefore, defendant's motion for attorney's fees and
2 costs is DENIED.

3 An appropriate order shall issue.

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5 Dated: July 20, 2006

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9 UNITED STATES BANKRUPTCY JUDGE
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CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

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United States Courthouse
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Dated: 7/21/06



Deputy Clerk